IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5112 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANAS MOHMADBHAI PATEL

Versus

POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 5112 of 2004

MR HARSHAD K PATEL for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/09/2004

ORAL JUDGEMENT

The detenu has been detained under the provisions

of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 28-3-2004 passed by the Police Commissioner, Vadodara City and he has been declared as immoral traffic offender.

2. It is submitted by the learned counsel for the petitioner that the petitioner has been branded as bootlegger based on single prohibition case registered with Fatehganj Police Station on vide C.R.No.II-35 of 2004 and impugned order of detention was passed on 28-3-2003. The argument was mainly concentrated towards the point that the detenu was in judicial custody while passing the order of detention. Drawing my attention towards page 21 of the compilation, learned counsel for the petitioner has contented that when the order of detention was passed, the detenu was in judicial custody which aspect ought to have been considered by the authority while passing the detention order. In this connection, my attention was drawn towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

> "Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

3. It seems that there is non-application of mind on the part of detaining authority as detenu was in judicial custody when the impugned order of detention was passed and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained. Since the petitioner succeeds only on this ground, learned counsel for the petitioner did not press other points. Learned counsel for the petitioner has made a statement at the bar that the petitioner will remain outside the Vadodara Police Commissioner limits for a period upto 31st January, 2005. Moreover, a co-detenu was also released by this Court vide order dated 22-9-2004 passed in Special Civil Application No.5110 of 2004 and hence, the detenu is entitled to be released on parity also.

4. The petition is allowed. The impugned order of detention dated 28-3-2004 passed against the detenu Anas Mohmadbhai Patel is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. The detenu shall remain outside the limits Vaodara Police Commissioner for a period upto 31st January, 2005. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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